The Madras Law Journal.

PART V & VI.] MAY AND JUNE 1899. [VOL. IX.

SIR ARTHUR COLLINS.

News has been received in Madras of the resignation by Sir Arthur Collins of the distinguished office of Chief Justice of Madras. He landed in this country towards the close of 1885 and has retired from his exalted station after filling it for the space of thirteen years and-a-half. It is meet that we should examine and appraise the work he has done during this period. It has been always the policy of this Journal not to indulge in criticism of the personal merits of our Judges. We have considered it extremely undesirable that expressions of want of confidence or disregard for the members of the highest judicial tribunal in the land should lower the dignity of the judicial office or weaken the confidence of the public in the judgments of that tribunal. Speaking with just pride of the work of Her Majesty's Judges in England, the Lord Chief Justice of England recently remarked in a speech at the Mansion House that it was one of the most significant, as it was one of the most happy, signs of their times, that when the Judge had spoken from the judgment seat, whether his decision might or might not run counter to popular feeling or popular prejudice, it was acquiesced in and treated by all the community with unfeigned respect. Fully recognising the necessity for such an attitude on the part of the public towards the judgments of the highest Court in the land, we have refrained from giving expression to convictions forced upon us as regards the merits of individual Judges, or their

fitness for the high office to which they have been called. In the recent despatch of Lord Elgin's Government regarding the status and salaries of Judges of Indian High Courts, attention is drawn to the importance of maintaining the efficiency of the Court, so that it might continue to command the respect and confidence of the people, especially, in a country like India. If we have very occasionally departed from this salutary rule of silence, such departure has been dictated by an anxious desire to give timely warning to the authorities of the possible danger to be averted. Sir Arthur Collins is no longer in our midst, and the fact that he is no longer actively connected with the discharge of judicial duties, renders it proper that a just estimate should be made of his judicial qualities and a fair judgment pronounced upon the work he has done. Such a judgment on our part, even though it may happen in some respects not to redound to the credit of the Judge that has left us, cannot affect the occupants of the Bench, or the dignity of the office of those who are engaged in the active discharge of judicial duties.

Since the constitution of the High Court there had been three Chief Justices before his arrival. Sir Colley Scotland came from the old Supreme Court to the High Court that replaced it. His mastery of legal principles and the soundness of his judgments won the admiration of the profession and the confidence of the public. Those were days when John D. Mayne and John Bruce Norton and others of the same calibre were the lions of the Bar. He was succeeded by Sir Walter Morgan prone to be lazy indeed, but gifted with a power of insight and expression which produced a profound impression on those who were privileged to hear the long oral judgments of his Lordship. Sir Walter Morgan retired, and his place was taken by Sir Charles Turner—a man of indomitable energy and possessed of a wonderful acuteness of perception which enabled him to do the work of two or three average Judges of the Court. It was, perhaps, a misfortune to Sir Arthur Collins to succeed them, for it was impossible that comparison should not infrequently be made between him and his predecessors by those that had seen the days when those Judges presided over the Court, or those who lived amidst the traditions of their greatness.

In an inaugural address delivered a few years ago by Sir Francis Jeune, the President of the Probate Division, as President of the Birmingham Law Students' Society, he observed: "Many of my audience know already, and the remainder will, I am sure discover, that practitioners and Judges are very much what they make each other. It is not apt to lead to satisfactory results when the advocate is much better equipped than the Judge. The eventual decision may not be wrong. Well-informed advocates are always considerate especially if their knowledge is not recent, and often have the gift of exposition. A Judge may discreetly hold his tongue, and allow wisdom to linger till knowledge comes. If Lord Campbell had not recommended such a method of enlightenment to Lord Chancellors, I should have hesitated to add that the faces of by-standers may be usefully consulted. But an argument under such circumstances is not edifying: certainly it is not likely to be productive of those phosphorescent hints and observations which sparkle along the path of an effective discussion and glimmer into the dark corners left for future litigants to explore. The spectacle of a Judge who knows much more than the advocate before him is more impressive; but I am not sure that the decision is not in greater peril." The spectacle of a Bench whose occupants fall below the level of the talent at the bar is not merely not edifying, but is apt to produce a feeling of want of confidence in the judicial administration of the country; and the Bench over which Chief Justice Collins generally presided was felt in many cases to be weaker than the forensic talent appealing to the judicial acumen of the Court. It is, therefore, the earnest desire of the whole people of this Presidency, not to speak of all branches of the profession, that Sir Arthur Collins's successor may raise the prestige and dignity of the Court to the level it used to maintain during the days of Sir Walter Morgan and Sir Charles Turner. Apart from the statement that the Bench and the Bar greatly re-act upon each other and the efficiency or inefficiency of the one produces a corresponding effect on the other, there is another important truth that the Chief Justice has a great influence for good or evil in moulding the judicial labours of his colleagues. If the Chief Justice does not attain to the highest standard of excellence, he is apt to pull down his colleagues to his level. But great indeed is the

praise due to those who rise above the atmosphere of dullness by which they are surrounded.

Sir Arthur Collins had no great reputation as a lawyer before he left England to occupy the office of Chief Justice of Madras. He appears to have attained the position of a leader of a circuit, but there was no evidence of high legal attainments or forensic ability. We have not been able to find any references to his forensic career in England, except that Mr. Montague Williams, in his book entitled "Leaves of a Life," refers to him in two places in a not very complimentary way. His name has figured very rarely in the English reports. He came to this country at a time of life which would have rendered the climate of this country, trying to the health and strength of many an ordinary Englishman. The period of his Chief Justiceship divides itself into two parts—the first runs up to the time of retirement of Mr. Justice (afterwards Sir George) Parker in the earlier part of 1896, and the second from that date up to the date of his own retirement. During the first period of his career, he had Sir T. Muthusami Aiyar and Mr. Justice Parker as his colleagues, in whose judgment and ability he had great confidence. In consequence of his reliance upon his colleagues, he very rarely troubled himself to take any prominent part in the work of the Court. After the retirement of Mr. Justice Parker, the feeling appears to have come upon him that he should assert his individuality to a larger extent than he had done before, and, although he did not write more judgments during the later period than in any corresponding part of the previous period, it must be confessed that he took a more active share in the moulding of the decision of the Court. We have specially gone through the reports of the period during which he has served as Chief Justice for the purpose of rectifying any possible error in the general impression that we have formed, and we are in a position to state that, except where he sat as a member of a Full Bench, His Lordship very rarely delivered a separate judgment, but was content to accept the judgments written by his colleague. Even the judgments which he has delivered sitting in Full Bench read like feeble paraphrases or abstracts of the more able judgments of some of his colleagues. It cannot fail to be astonishing to the lay-public

that search the reports as you may, there is hardly a judgment of striking ability or that can be quoted as a specimen of profound legal acumen or judicial talent. That he was inferior to several of his colleagues during the time that he has filled the office of Chief Justice is, we consider, no disparagement. Chief Justice Cockburn, or the late Lord Coleridge, who have distinguished themselves in their own way as among the most brilliant Judges that England has ever had, were not regarded in their days as equal to some of their colleagues in erudition or legal acumen or judicial insight. But they had redeeming qualities which raised them above their fellows and justified their choice by the authorities for the exalted station which they filled. During the long period for which he was connected with the Court he never sat as a Judge of first instance, possibly under the mistaken impression that the Chief Justice should be a member of the Court of Appeal. He has, it is true, presided at the Sessions, and the solemn trappings and ceremony and paraphernalia of the sessions court appear to have exercised considerable fascination upon his fancy. We have attended several trials over which he presided, and some of them have been sensational and have had every imposing circumstance and sign of grandeur attached to them, but we cannot recall to mind any charges to the jury which marshalled the facts of a complicated case inlogical array, which it should have been easy for him to deliver, if he had been a great *nisi prius* advocate during hisdays at the Bar. The jury have been treated to dull readings from the recorded evidence of witnesses with occasional remarks interspersed, that it was for the jury to say whether they believed this or that circumstance and a very prosy and altogether dull proceeding it was to those who were bound under the law to listen to them and to the naturally eager and expectant crowd of bye-standers that collect to watch criminal trials in Presidency towns. Sitting as a single Judge, except at the Sessions, necessitated close attention to the proceedings, for a judgment would have to be prepared and delivered by the presiding Judge which is subject to the risk of an appeal under the Letters Patent, which too sensitive natures cannot bear to look upon with equanimity.

It has always seemed to us that the system of two Judges sitting together to hear a case is fraught with the danger of redu

reducing one of the Judges to a condition of indifference, making him yield too readily to the stronger man and of making both the members eager to avoid a difference of opinion to be followed by a reference to a third Judge or by rehearing before a Bench of three Judges—a process the repetition of which is apt to tell very unpleasantly upon delicate natures. Such a system contributes to check the free and independent expression of opinion and to promote an eagerness to arrive at compromises which cannot but be detrimental to a sound and impartial administration of justice. It has seemed to us, therefore, to be a great merit in the system of English judicature that it generally insures the presence of three members in the Court of Appeal at the hearing of appeals from the Queen's Bench and Chancery Divisions of the High Court. As the system obtains in India, whether there is laziness or weakness or delicacy or a fear of repitition of work, it reduces the efficiency of the Appellate Bench.

Chief Justice Collins had one very valuable quality—a thorough impartiality and independence or freedom from class or sectional prejudice. There have been three branches of the profession practising before him, two of them mainly represented by his countrymen and the third by the sons of the soil, all eagerly competing with each other for professional success and pre-eminence. It is a great honor to the retiring Chief Justice that his strong sense of justice and impartiality enabled him to hold the scales evenly between them, never influenced by a desire to favor any one at the expense of the others. Indeed, we may go so far as to say that when he came to this country, he found one of the branches suffering under certain disabilities which he was anxious to remove during his term of office. We have no doubt that that branch will maintain a feeling of lively gratitude to the retiring President of the Court for all that he has done in the way of enabling them to compete on equal terms with the members of the other branches. He has raised the status of the vakils by giving them a professional costume. It was during his time that it was decided that vakils were competent to appear in appeals from the Insolvent Court. He is known to have fought strenuously for the office of Government Pleader in Madras being held by a vakil; he is believed to have entertained a strong inclination

to enroll vakils of some standing as advocates of the Court, and he has expressed himself more than once as unable to understand why vakils should not appear and act before the Insolvent Commissioner. But these undoubted acts of justice and impartiality cannot blind us to his shortcomings.

It has sometimes been said by those who really had no acquaintance with the subject that he was a great criminal lawyer. If this was a euphemistic way of representing the fact that his knowledge of civil law was not very deep, one might let the observation go unchallanged. But if the assertion is regarded as intended to convey the meaning, as the words obviously do convey it, that he is a master of criminal jurisprudence, we must confess we have seen no evidence of such mastery. He attached, it is true, a great importance to the speedy disposal of criminal cases, and during his tenure of office the criminal files of the High Court have been kept down at a low figure and most criminal cases were disposed of in less than three months from the date of institution in the High Court. It may be that he had a greater familiarity with criminal cases during his career in England, and had, therefore, a readier grasp of the facts of the criminal appeals that he had to dispose of than of civil cases; and he arrived generally at a fairly sound conclusion upon them.

He has been generally courteous in his treatment of the Bar and has displayed considerable patience in hearing the arguments at the Bar even though they happened to be somewhat tedious. He was saved from the danger which a Judge of great ability who fancies himself much more knowing than all the men at the Bar to whose speeches he has to listen is apt to fall into of rarely condescending to give a patient hearing. As he fittingly expressed it at the opening ceremony of the High Court of Justice in its present splendid habitation, it may be said to his credit that he endeavoured to do his duty "in fear of God and without fear of man." "He tried to administer the law," to quote his own words again, "without distinction of class, creed or race."

Mr. Richard Harris, Q. C., a well-known figure at the English Bar, says in a recent book which he has issued entitled "Her Majesty's Judges and their relation to Advocacy," that the one

great unchanging obligation of Judges is *impartiality*, and that a Judge should be "swift to hear, slow to speak and slow to wrath." Tried by these tests, Sir Arthur Collins may be pronounced a success.

TOPICS OF MALABAR LAW.

II.—*The Karnavan.*

We have now to consider the position of the Karnavan of a Marumakattayam Tarwad, and his rights and duties. We think that generally his position may be accurately expressed by saying that it is the same as that of a manager of a Hindu Mitakshara family with such modifications as the rule of impartibility necessarily involves. Like the manager of a Hindu family, his acts to be binding on the family must be those of a prudent manager acting *bonâ fide* in the interests of the Tarwad. But an alienation or an incumbrance created by him if not binding on the family is altogether void; while in the case of a manager of a Mitakshara family it would be binding on his share. Again, however beneficial or necessary an act done by the junior members may be in the interests of the Tarwad, it would be absolutely void as against the Tarwad even though all the members except the Karnavan may take part in it. The right of management is a birth-right and cannot be affected by the acts of junior members. The same is the rule in the case of an ordinary Hindu family governed by Mitakshara Law, the senior member alone has the right to manage: no one else, not even all the members put together have the right to represent the family in transactions with strangers. But since the Courts have recognized the right of a coparcener in a Mitakshara family to deal in any manner he chooses with his own share for valuable consideration, the acts of a junior coparcener, although they may not affect the family property as a whole, would affect the share of the coparcener who does the act. Whether the coparcener making an alienation be the manager or a junior member, the alienation will operate upon the share of the alienor. An alienee can enforce the alienor's equity to a partition of the property alienated. But as there are no individual shares in a Marumakkattayam Tarwad any alienation or incumbrance if made by any but the manager is

absolutely void (see 1 T. L. R., 88). It would be equally void even where it is the act of the manager unless it is one which a prudent man acting in his own interests would be justified in entering into or the alienee acted *bonâ fide* in the belief that the alienation is beneficial to the family.

We do not purpose to go through the whole field of the rights and duties of a Karnavan, as the matter has been treated at great length by several text-writers. We intend only to make a few observations to show wherein the statements of text-writers and of some decisions require to be modified or corrected. Mr. Wigram observes that the "Karnavan for the time being has an almost absolute control over the distribution of the family income and the family expenditure." Mr. Strange in his report as a Special Commissioner on the affairs of Malabar observes, "that the theory of a Hindu family in Malabar is that the head thereof has entire control therein." Mr. Mayne (see § 268 of his "Hindu Law and Usage") observes," that where the property is indissoluble the members of the family may be said to have rights *out* of the property than rights to the property. The head of the family is entitled to it in entire possession and is absolute in its management." These statements of the law are inaccurate and misleading. The Karnavan of a Tarwad has no more power than a manager of a Mitakshara family. He has not a greater beneficial interest in the Tarwad property than any other member of the Tarwad has in it—*Varanakot* v. *Varanakot*, I. L. R., 2 M., 328, at p. 331. But he is not a mere agent in the same manner as the manager in a Mitakshara family is not a mere agent. Neither of them can be controlledin his management by the other members of the family or Tarwad, provided the acts are those of a prudent manager. Their powers are not the result of delegation by the other members of the family or Tarwad and cannot therefore be restricted or affected by the dissent or the opposition of the other members (see *Iravanni Ravi Varman* v. *Ittapu Ravi Varman*, I. L. R., 1 M., 153, at p. 157). But equally in the case of the manager and the Karnavan, they have no right to appropriate the property to themselves except in so far as they are required for their legitimate expenses. When it is said, therefore, that a Karnavan has an almost absolute control over the distribution of the family income and the family expenditure, it should

not be understood that he is at liberty to do anything he likes with the income of the family property. He cannot give it away to strangers. He cannot use it for any but Tarwad purposes. He has no right to appropriate an undue proportion of it to his own use and he is bound to be fair and impartial in the treatment of the various members of the family; "equal dealing is the duty; all are eqally entitled to support"—*Koran Nair* v. *Chandan Nair*, 3 M. H. C. R., p. 295. He has no doubt a certain amount of discretion in dealing with the income. He is not bound to give an equal share to every one. He may consider the means and the circumstances and the resources of each member in determining what allotment should be made to him; and the Courts no doubt will deal with him generously in allowing him to exercise his discretion. But it is misleading to say that he has an almost absolute control over the distribution of the income. If he be grossly partial or unfair, or if he appropriates the income to his own use or uses it for other than Tarwad purposes, the Court can certainly take cognisance of it. Mr. Wigram laid down that a Karnavan may appropriate half the family income for his own expenses and for extraordinary expenses of the Tarwad. But the High Court held that no such rule can be adhered to—*Narayani* v. *Govinda*, I. L. R., 7 M., 352. In suits for maintenance there is no doubt that the Courts will decree an equal allowance to all the members unless there be circumstances for justifying a diminution; and the Karnavan is bound to act on the same principle. It may not be easy for the Court always to correct the Karnavan where he does not act properly. We shall consider hereafter what remedies the Court may grant against a Karnavan who acts improperly in the discharge of his duties. But one thing of all is certain that every improper act can be properly considered in a suit for removing him.

Mr. Mayne, when he states that the members of a Tarwad have rights *out of* the property than *to* the property, does not seem to make any difference between the position of the Anandravans of a Malabar Tarwad and the junior members of an ordinary Hindu family. For he proceeds to say: a family governed by Mitakshara Law is in a very similar position except as to their right to a partition and to an account as incident to that right. It is misleading,

if not fallacious, to say of the rights of the junior members of a Mitakshara family or a Marumakkattáyam Tarwad that they are not rights to the property but rather rights out of the property. As pointed out by the High Court in *Varanakot* v. *Varanakot*, I. L. R., 2 M., 328, the Karnavan "is interested in the property of the Tarwad as a member of it to the same extent as each of the other members. All the members including the Karnavan are entitled to maintenance out of the Tarwad property. In *Tod* v. *Kunhamod Hajee*, I. L. R., 3 M., 174, *Turner*, C. J., and *Muthusami Aiyar*, J., in pointing out the distinctions between the incidents of property held by a Mitakshara family and that held by a Malabar Tarwad, observe that the law of the latter is less developed than that of the former, and seem to quote with approval the statement of Mr. Mayne which we have been commenting upon, and proceed to say: "The respect for elders which is a marked feature of all Hinduism is nowhere stronger than in Malabar, and consequently, although the individual interest of the manager of a Tarwad in Tarwad property is considerably less than that of a manager of a Hindu family, he has, in the management of the Tarwad property, somewhat larger powers than are accorded to a manager of a Hindu family. While equally with the manager of a joint Hindu family he is incompetent to aliene the estate without the consent of the other members of the Tarwad, except to supply the necessities of the Tarwad or to discharge the debts of the Tarwad; he can, not *only* make leases at rack-rents ordinarily for the term of five years for cultivation, but leases with fines repayable on the expiry of the terms in the nature of mortgages (*kanoms and mortgages otti*) in which little more than a right to redeem may be left to the family—*Edathil Itti* v. *Kopashan Nair*, 1 M. H. C. R., 122. We have not been able to ascertain that he has ordinarily power to make any other dispositions of property than such as are sanctioned by local usage, and although this Court ought, so far as it is justified in so doing, to construe liberally the powers which managers are competent to exercise so as to enable them to deal with Tarwad property as it would be dealt with by a prudent owner for the benefit of the family and to interpose no unnecessary obstacles to the employment of property in new industries, in so doing it undertakes what in some cases may be no easy duty—the determination of what acts

are and what are not beneficial; and it cannot lose sight of the fact that the office of Karnavan is fiduciary—*Koiloth P. M. Koran* v. *P. M. C. Nair*, 2 Mad. Jur., 117, and that a Court has no authority to confer on a Karnavan larger powers than are sanctioned by usage." We would respectfully submit that the right to make *kanom* and *otti* leases exists where it does, only because in the case of the famileis of the ancient landlords and other well-to-do families, that is the ordinary mode of enjoying property; and a manager, of course, would have power to do everything which is in accordance with the customary mode of enjoyment. It does not show that the powers of a manager of a Malabar Tarwad are higher than those of a manager of a Mitakshara family. Nor do we think that the Karnavan of every Tarwad would have the power to grant *kanoms* and *ottis*. Take for instance a family of agriculturists and not of landlords, we doubt very much whether the Karnavan would have the power to borrow money and to give away the lands on mortgage for a term of 12 years unless the money is borrowed for the benefit or the necessities of the Tarwad. The case cited by their Lordships, *Edattil Itti* v. *Kopashan Nair*, does not seem to bear out any general proposition affirming the Karnavan's right to make *kanom* or *otti* leases. *Scotland*, C. J., with whom *Strange*, J., concurred, observed in that case that an *otti* is different from a sale which, in their Lordships' view, requires the concurrence of the senior Anandravan. Regarding the power of a Karnavan to create an *otti*, their Lordships merely say that "a Karnavan may *singly* create it for proper reasons." The manager of a Mitakshara family, we think, has similar powers to create a mortgage *singly*, provided there is adequate family necessity or the transaction is for the benefit of the family. No doubt the proposition that a Karnavan may grant a *kanom* or an *otti* is often stated in general terms. (See *Varanakot* v. *Varanakot*, I. L. R., 2 M., at p. 330, and *Vasudevan* v. *Sankaran*, per *Collins*, C. J., I. L. R., 20 M., at p. 133). But the question was not really in issue in any of those cases, and we do not think such a right would be upheld in all cases without proof of necessity or manifest advantage to the Tarwad. As we have already observed, in the case of some families the usual mode of enjoyment is by granting *kanoms* and *ottis*; and in such cases the Karnavan's power to create such mortgages may be absolute as being an ordinary incident of management. But there is no justification.

for assuming any general rule that mortgages of the sort may always be created by Karnavans without any special reason. Dr. Orms by says: "that a mortgage for a fixed term is beyond the scope of the Karanavan's powers and requires assent (of the junior members) in the same manner as a sale," see § 23, p. 14 of the "Outlines of Marmakkattayam Law as administered by the Travancore High Court." "It has been repeatedly held by this High Court (Travancore) in a long series of decisions that a Karnavan cannot make an *otti* and *Kuli kanom* mortgage of property; (A. 126 of 1057, A. 155 of 1068)." He proceeds to say that alienations by way of ordinary mortgage may be made by the Karnavan alone if made for the benefit of the joint family. Sometimes the property of the family is said to be vested in the Karnavan, see *Varanakot* v. *Varanakot*, I. L. R., 2 M., p. 330, and *Vasudevan* v. *Sankaran*, per *Collins*, C.J., I.L.R., 20 M., 133. But this is no more true of a Karnavan than of a manager of a Hindu family. The property is vested, not in the manager alone, but in all the members of a family or Tarwad. No doubt, owing to the absence of the right to partition, the junior members of the Tarwad are in a large measure but impotent owners. But in the eye of law their ownership is as good as that of the Karnavan. As pointed out in *Tod* v. *Kunhamod Hajee* the Karnavan's office like that of the manager of a Mitakshara family is a *fiduciary* one, though both are more than mere trustees (see *Varanakot* v. *Varanakot*, I. L. R., 2 M., p. 328, inasmuch as besides their right of management they are also owners equally with the other members of the Tarwad or the family.

(*To be continued.*)

SPENDTHRIFT LEGISLATION.

Notwithstanding all that has been said by theorists about the expediency of legislation being based solely upon an individualistic basis, legislatures have, as a matter of fact, in most countries proceeded on lines not acceptable to the thorough-going individualist. Legislation has been as often paternal and socialistic, as it has been individualistic. One of the many objects of the paternal solicitude of Government is the class of spendthrifts. Legislation about spendthrifts was as common in the ancient world as in the modern. The

motives with which such legislation has been undertaken and the principles which have regulated it have been shifting from time to time and in different countries. But the broad fact remains that, as a class, prodigals have in numerous countries been the subject of exceptional treatment. Prodigals were treated as a class of disqualified persons by the Roman Law, and they were liable to have the management of their estates taken out of their hands and curators appointed to act for them. The protection of the prodigal himself from the consequences of his imprudence and the protection of the rights of his relations appear to have been the considerations which led to their disqualification. A prodigal was supposed to be akin to an insane person and his disabilities were similar to those imposed upon lunatics. The Roman Law interfered to protect the estate of a prodigal on the same ground upon which it interfered to protect the estates of minors and lunatics. According to the Twelve Tables, the nearest agnate was appointed to manage the estate of a prodigal who had been interdicted upon an inquisition held for the purpose. The prodigal was incompetent to alienate his property or enter into any contract or do anything which would have the result of diminishing his estate. Similar legislation seems to obtain on the Continent of Europe.

In England, legislation in favor of prodigals never found favor, and it was considered to be more advantageous to the country to promote the free alienation of property. On the other hand, in America, laws have frequently been passed for the protection of the estates of spendthrifts, and in some of the statutes passed towards the end of the last century, the word "*spendthrift*" is defined to include every person who is liable to be put under guardianship on account of excessive drinking, gaming, idleness or debauchery. The chief motive which inspired this legislation was the fear that the spendthrift might expose himself and his family to want and might become a charge upon the town where he was residing. A complaint may be made by the prodigal's relations, or by the overseer of the poor of the town where he is residing, or by certain other classes of persons named in the statutes. After the appointment of a guardian for the estate, the spendthrift could not make any transfer of his real or personal estate and could not enter into any contract with reference to it. In India also, laws have been introduced in different parts of the country by the British Government

with the object of protecting large landholders who have encumbered their estates. The reasons which have influenced the English Government are wholly of a different character to those that have led to such legislation in America. There is no danger in this country of a burden being thrown upon the local authorities, but the Government deems it necessary to undertake such legislation, partly from motives of commiseration towards the aristocracy, partly from an apprehension of the evils that might arise to the country by the disappearance of the class of great landlords, and partly from a perception of the advantages that may be derived by the State by the maintenance of a wealthy landlord class.

From an abstract point of view, numerous objections will readily suggest themselves to any legislation which is intended to save people from the consequences of their own imprudence. It is to the interest of society that property should pass from the hands of imprudent proprietors to those who are likely to be better able to take care of it. To protect an improvident class from the consequences of its conduct would have the effect of offering a premium to the continuance of the habits which led to its embarrassment. Where a prodigal can be placed under a curatorship at the instance of his relations or the civil authorities, the system is open to the objection of undue interference with individual liberty. Where, on the other hand, the prodigal can himself apply to be declared one and to have the management of the estate committed to the care of the Government, the system is open to the objection of involving an interference with the vested rights of creditors. The various enactments which have been passed in British India in protection of the owners of incumbered estates are all open to this objection. There are, however, considerations of great weight in favor of legislation on behalf of the proprietors of large estates. The landed aristocracy of a country is the class most interested in the stability of the Government and in the maintenance of peace and order. Their authority and influence are factors which tell against any violent upheaval of the existing order. A wise Government will not do or permit anything which may have the effect of weakening that authority and influence. Apart from the considerations of sentiment and political expediency, there are other considerations of public policy entitling them to considerate treatment. The hereditary feelings of attachment between the zemindar and his ryots are

likely to dictate a more liberal attitude towards the ryots than is likely to be taken by persons who own no ancient ties with the peasant class. Yet more important is the economic advantage to the state of a rich landlord class. We have no desire to enter into the vexed question of the relative superiority of peasant proprietorship or the system of large landed estates. But having regard to the fact that in this country we have a combination of both the systems and that India is mainly an agricultural country the possibilities of initiating agricultural improvements on a large scale ought not to be lost sight of. There are numerous other directions in which a wealthy aristocracy, if only properly educated, can be made to promote the material and moral interests of a country in a manner in which those interests cannot be promoted in a community destitute of a wealthy class. Such are the considerations which have led to the enactment of laws for the relief of encumbered estates. These various enactments do not, however, seem to be efficient enough to attain the objects above mentioned. If the prevention of the disintegration of ancient estates is desired, a more radical change is necessary for the purpose. The mere deprivation of the management of the estate and the imposition of disabilities during the period of management will not be sufficient to achieve this object. The joint-family system which obtains in India and the recent decisions of the Privy Council recognising the right to make alienations of zemindaries *inter vivos* and by will have gone a long way towards the disruption of zemindary estates. A zemindar who is disposed to be extravagant can still indulge in extravagance by selling portions of his estate; and this result is more likely to follow hereafter, as the difficulties placed in the way of creditors are likely to deter them from advancing moneys by way of loans. Unless some restraints upon their powers of alienation are placed upon the owners of zemindaries, half-hearted measures like the recent Act (Madras Act IV of 1899) to amend the Court of Wards Regulation must be defective. This Act makes no attempts to save estates, the owners of which are not willing to make an application to be declared incapacitated owners.

We shall now notice some of the principal provisions of the new Act in regard to spendthrifts declared incapacitated upon their own application and to persons already subject to the jurisdiction of the Court of Wards under Regulation V of 1804. While

the Regulation merely prevented incapacitated persons from taking charge of, or administering, the affairs of their property, the new Act imposes greater disabilities and declares them incompetent to enter into any contract involving any pecuniary liability, to mortgage, charge, lease or alienate their property, or to grant receipts of rents and profits arising from the property. Ss 28 to 35, introduced by the new Act, are of general application to all classes of wards subject to the Court of Wards. The object of these provisions is the liquidation of the debts and liabilities which may affect the estate of the wards. The Collector is empowered to publish a notice requiring all persons having pecuniary claims, whether immediately enforceable or not, against the ward or his property to furnish particulars of the same to the Collector within six months from the date of the notice. Notice is also required to be given by registered post to every person who is known to the Collector as having any pecuniary claims against the ward or his property and of whose address he is aware, or is credibly informed. If the claimant satisfies the Collector that he had sufficient cause for not notifying to the Collector within six months, he may be allowed by the Collector to present his claim within a further period of six months. The obligation to notify claims to the Collector does not extend to the claims of Government or local authorities, or to claims for maintenance, or wages, or salaries due to servants.

The consequence of an omission to notify claims to the Collector is that the claim will cease to carry interest from the expiration of six months after the date of the notice, and will not be paid until after the discharge or satisfaction of the claims notified or admitted under sub-section 1 of S. 30. This is a somewhat drastic provision, and if it could be ensured that every creditor or claimant should be informed of the notification, there might not be much hardship. But as the Collector can only inform persons of whose claims and address he is aware, and as the Act provides no machinery for the supply of the necessary information to the Collector, there is a likelihood of persons having claims against the estate not receiving notice of the notification. The Act, no doubt, provides for the publication of the notification in the *District Gazette*. But a publication in the *Gazette* is nothing more than a farce and a useless, though perhaps, unavoidable formality. Even the *Fort St.*

George Gazette, which is published for the whole Presidency, is seldom read by any except officials and the *District Gazettes* are still less read by non-officials. The presumption that publication in the *Gazette* is publication to all concerned is nothing more than a fiction, and sometimes a convenient fiction. Publication in the newspapers would be much better calculated to achieve the object, and, though the Court of Wards is at liberty to adopt this method, it would have been better, if it had been specifically prescribed. The best method of notification, however, is by sending a separate notice to every individual creditor. In this connection, we must express our regret that the amendment moved in Council to the effect that a person presenting an application to be declared incapacitated should be required to submit a verified schedule of his debts and liabilities, was not carried. A similar provision is to be found in all the other incumbered estates, Acts in India, and we do not think that the fear expressed by the official members of such a provision deterring persons from applying for relief and of its being likely to expose them to the risk of a prosecution for perjury is well-founded or sufficient to overweigh the advantages which would have resulted from the adoption of the amendment. A person who finds himself involved and applies under the Act to be declared incapacitated holds a position analogous to that of an insolvent, and as an insolvent is required to submit a verified schedule of his debts, we see no reason why the new class of incapacitated owners should not be obliged to furnish a schedule of debts and liabilities. After the claims have been notified by the creditors, the Collector is to make such enquiry as he thinks fit and decide which claims are to be allowed in whole or part and which claims are to be disallowed.

Claimants, however, are not debarred from instituting proceedings in court in respect of their claims. The Governor in Council may declare by notification in the Gazette that execution of decrees passed by civil courts which are capable of execution by sale of any immoveable property shall be transferred for execution to the Collector of the District in which the property is situated. Upon this notification, the Collector can act under the provisions of Ss. 321 to 325 of the Code of Civil Procedure. The most drastic provisions of the Act, however, are Ss. 39 to 41; sections 39 and 40 involving a serious interference with the rights of creditors and lessees and S. 41

involving an interference with the rights of the heirs of incapacitated owners. Under S. 39, a mortgagee in possession may be called upon by the Collector to deliver up possession of the property at the end of the current year, and on refusal may be summarily ejected therefrom. Under S. 40, if a lessee holding under a lease granted by the incapacitated proprietor within three years of the assumption of management by the Court of Wards is found not to have paid sufficient consideration for the lease, the Collector can, after the lapse of two years from the date of notification, determine the lease at the end of the current year, unless the lessee pays any further consideration that may be demanded by the Collector. A lessee who is dissatisfied with the decision of the Collector is at liberty to establish the validity of his lease in a civil court. If the lessee does not pay the additional consideration required, the Collector can summarily evict him without resorting to a civil court. These provisions involve a serious violation of the vested rights of creditors, and while on the one hand they will render it more and more difficult for zemindars to obtain loans, it is very doubtful on the other, whether these stringent provisions will result in any considerable advantage to the zemindars or to the public. For our own part, we think that instead of leaving it to the Collector to summarily determine the question and drive the creditor or lessee to the civil courts, it is the Court of Wards that should be obliged to go to the civil courts to have it declared that the mortgage or lease is not binding whether as an unconscionable bargain, or upon any other ground recognized in law or equity. While a proprietor may be declared incompetent to enter into future transactions affecting his estate, we think it will be gross injustice to enable him to break his contracts and defraud his creditors and lessees. After the debts affecting the estate have been cleared, the Court of Wards may restore the estate to a person declared incapacitated upon his application, if it is satisfied that he is competent to administer the affairs. This we consider a wholesome provision, for if the estate is restored to an owner who has not given up his improvident habits, the estate would be again plunged in debt and all the trouble undertaken by the Court of Wards would be thrown away. If the debts and liabilities are not liquidated during the life-time of the incapacited person, the Court of Wards may continue the superintendence on behalf of his legal representative even though the latter may be

under no disqualification. This provision also appears to be of a drastic character. Unless the legal representative is incompetent to manage his affairs, there is no more justification for withholding his estate from him and continuing the management of the estate, than there would be for taking charge of an estate merely on the ground that a person's ancestor was a spendthrift and had plunged the estate into debt. We are aware that some reasons may be urged in favor of the provision in the Act. It may be that the Court of Wards has put in hand schemes for the liquidation of the debts, and that the schemes may not have been completely carried out. It may be of some advantage to the heir-at-law of the incapacitated proprietor to have the scheme completely carried out and have the estate freed from debts. These advantages, however, are in our opinion sufficient to justify a temporary confiscation of the inheritance. How far this Act will succeed in preventing the disruption of zemindaries is a matter which the future must decide.

NOTES OF INDIAN CASES.

Dhuramsey *v.* **Ahmedbhai,** I. L. R., 25 B. 15. In the case of a lease for a certain period where rent had been paid in advance and premises had been burnt down subsequently, the Transfer of Property Act, S. 108 cl. *e* enables the lessee to avoid the lease. But the further question, whether the lessee is entitled to claim the refund of any portion of the amount advanced, is not touched by the Act. It appears to us that *Castdy*. J was right in declining to follow *Paradine* v. *Jane*, Aleyn 26 and other English cases decided upon that authority. S. 65 of the Contract Act enables the Court to adjudge a return of the advantage or such part thereof as may be just by the lessor.

Ningawa *v.* **Bharmappa,** I. L. R., 25 B. 63. The decision in this case raises a question of some interest, whether a statement by a deceased owner of adjoining land in a mortgage of that land that it was bounded on one side by so and so's property is a statement against his pecuniary interest, and, therefore, admissable under S. 32 of the Evidence Act. The learned Judges who decided the case are of opinion that such statement is evidence. They begin by saying that the statement of indebtedness of the mortgagor is against interest and therefore relevant. But it does not appear to us to follow that a statement that it is bounded on one side by somebody's property is evidence of that person's ownership. It appears to us that under cl. 3 of S. 32 the state-

ment sought to be made evidence should itself be against the interest of the person making it and not merely connected in some way with a statement against interest. The language of the section in cls. 2 and 5 is different. The *Rajah Leelanund Singh* v. *Mussamut Lakhputtee Thakoorain* 22 W. R. 231 has really no bearing on the present question, becaue in that case the statement itself to be put in evidence could well be regarded as against the interest of the person making it. *Hiham* v. *Ridgeway* would seem rather to support the decision of the Court. But as observed in Smith's Leading cases at p. 331 there seems no reason for admitting the statement as evidence of facts as to which the improbability of its falsehood does not exist. Even in England disconnected facts though contained in the same document or statement are inadmissable. See *Doe* v. *Bevis*, 7. C. B. 456 and Ameer Ali's Evidence, p. 231. The language of cl. 3 has to be stretched somewhat to justify the conclusion of the learned Judges.

Sadashive *v.* **Trimbak,** I. L. R., 25 B. 146. This is as regards the nature of a minor's contract, whether it is void or voidable. There is a full discussion of the authorities, the majority being inclined to take the view that the contract is voidable. We have discussed the question in a critical note in the 1st volume at p p. 262 to 270 and we see no reason to alter the conclusion there expressed. The Madras and Calcutta High Courts, have taken the same view as the Bombay High Court on the question.

SUMMARY OF RECENT CASES.

Landlord and tenant—Distress for rent—Goods impounded on the premises—Absence of the man left in possession—Removal of goods —Action for pound breach.

Jones *v.* **Biernstein** [1899] 1 Q. B., 470.

Where the man left in possession of goods distrained and impounded on the premises for rent due to the landlord, left the premises and did not return till two days later, and the true owner of the goods during his absence entered the premises and removed the goods, it was held by the Court of the Queen's Bench that when once goods were distrained and impounded, they came into *custodia legis*; that so long as the distress was not abandoned the mere fact that the man was not in actual possession of the goods did not take them out of the custody of the law; and that the remover of the goods, true owner though he was, was liable to an action for pound breach.

Company—Illegal distribution of capital by directors—Directors ordered to replace money—Right of directors to be recouped by shareholders.

Moxham *v.* **Grant** [1899] 1 Q. B., 480.

Where the directors of a company who carried on the business of owning shares in ships distributed among the shareholders the insurance money realised on the loss of a ship, but were subsequently on the winding-up of the company ordered by the Court to replace the money on the ground that the distribution not having been sanctioned by the Court of Chancery was *ultra vires*; in an action by the directors to recover the money from the shareholders it was held by the Court of the Queen's Bench that the directors who made the payment under a mistake of the company law were entitled to be indemnified by the shareholders, and that the shareholders who knew that it was the insurance money they were receiving and who alone benefited by the payment could not in justice resist the claim.

Evidence—Prisoners jointly indicted—Admissibility of evidence—Case stated on behalf of one prisoner—Quashing conviction of the other.

The Queen *v.* **Saunders** [1899] 1 Q. B., 490.

Two prisoners were jointly indicted for conspiracy. One was represented by counsel, while the other was not. The counsel for the first prisoner objected to two questions put to a witness by the counsel for the prosecution; but the objection was overruled by the Chairman. However, at the request of the counsel, he reserved for the opinion of the Court the question whether the questions were rightly permitted and whether if not the conviction could still be sustained. The Court rejected the evidence admitted as hearsay and held that the conviction could not be sustained, as inadmissible evidence had been left to the jury. Then the further question arose as to whether the conviction of the other prisoner on whose behalf no question had been stated should be left alone or quashed. It was held that the Court had jurisdiction to quash the other conviction also, because the question of the admissibility of evidence was common to both prisoners and because the convictions of the two prisoners stood upon the same grounds and must stand or fall together.

Practice—Interpleader—Bailee estopped—'Jus tertii.'

Ex parte **Mersey Docks and Harbour Board** [1899] 1 Q. B., 541.

A certain person lodged goods with the Board who held them only in the character of wharfingers and pledged the goods to a certain bank to secure advances made by them; and it had been transferred into their names in the books of the Board. Subsequently he managed somehow to get dominion over the goods and proceeded to pledge the goods to secure advances made by another bank. But before this latter bank made the advances, an officer of the Board wrote to them to say that the goods were held to their order. In an action by this latter bank against the Board for wrongful detention and damages, the defendants successfully applied for an interpleader summons. The bank appealed against the order. It was held by the Court of Appeal that the conditions necessary under Rules 1 and 2, Order LVII, for the claim of relief by way of interpleader were present in the case (namely, the party was under a liability for goods, in respect of which two persons were about to sue; the applicant claimed no interest in the subject-matter; the applicant did not collude with any of the claimants; and he was willing to dispose of the goods as the Court should direct); that therefore an order directing the banks to interplead and establish their claims was rightly made, notwithstanding that the Board might be estopped by their letter from denying the claim of the bank; and that if the bank had any claim upon the letter, they were at liberty to sue for the value of the goods if they were defeated on the issue and for any other damages arising from the conversion of the goods by the Board.

Sale of Goods—Possession of bill of lading with the sellers' consent—Non-acceptance of Draft—Transfer of the bill to sub-vendee—Stoppage in transit.

Cahn and Mayer *v.* **Pockett's Bristol Channel Steam Packet Company, Limited** [1899] 1 Q. B. 643 C. A.

Two questions were raised in this case—(1) whether when a seller of goods sends the bill of lading and a draft for the price under cover of one letter, the buyer might without accepting the draft take possession of the bill of lading and confer a valid title on a purchaser who takes it in good faith and without knowledge of the want of authority of his vendor to deal with the goods and the bill; (2) and whether the seller could stop the goods in transit as against the *bonâ fide* sub-purchaser.

It was held that though according to *Shephard* v. *Harrison*, L. R., 5 H. L., 116 the property in the goods could not pass to the buyer till the draft was accepted, the bill of lading having passed into the possession of the buyer *with the consent* of the seller, a valid title could be passed to a *bonâ fide* sub-purchaser by a transfer of the bill of lading under the express provisions of section 25, sub-section 2, of the Sale of Goods Act, 1893.

As to the other question whether even if a valid title could and did pass to the sub-purchaser under S. 25 of the Sale of Goods Act the seller could stop the goods in transit, it was held that the combined effect of S. 2, Sub-S. 1 and S. 10 of the Factors Act, 1889, and the Act of 1893 was to put an end to the right of stoppage *in transitu* under circumstances such as those of this case and that S. 61 Sub-S. 2 of the Act of 1893 did not preserve to the seller the common law right of stoppage which he had lost under the provisions above mentioned.

Evidence—Title to commonable lands—Reputation, admissibility of—Deposition in suit to perpetuate testimony—Survey and report made under statute.

Evans *v.* **Merthyr Tydfil Urban Council** [1899] 1 Ch. 241 C. A.

Where a question was raised as to whether certain lands were common lands, or were subject to commonable rights of either of two parishes, it was held that having regard to the general interest in the locality on such a question, evidence of reputation was admissible. The explanation of *Earl Dunraven* v. *Llewellyn*, 15 Q. B., 791, in *Warrick* v. *Queen's College, Oxford*, L. R., 6 Ch., 716, approved.

The mere fact that at the instance of a predecessor in title of a party to a suit, a deposition was taken in order to perpetuate testimony does not, unless it was in any way used or adopted by him, amount to an admission so as to be admissible against the party to the suit. And the fact that the deposition was found to be unsealed is not evidence of any user or adoption by the predecessor, as the deposition might well have been opened for other purposes.

Even though according to the dictum of Lord Chelmsford, L. C., in *Phillips* v. *Hudson*, L. R., 2 Ch., 243, a survey and a report prepared for the Crown are inadmissible on the ground that they were made for the Crown as private owner, yet when they were made pursuant to a

public statute, they satisfy the tests of a "public" document laid down by Lord Blackburn in *Sturla* v. *Freccia*, 5 A. C., 623, and are admissible in evidence as such.

Covenant in restraint of trade—Reasonable protection of the covenantee—Public policy.

E. Underwood & Sons (Ld.) *v.* **Barker** [1899] 1 Ch. 300.

The defendant agreed to serve as clerk and foreman under the plaintiff who carried on an extensive trade as hay and straw merchants in the United Kingdom, France, Belgium, Holland, and Canada. The written agreement entered into between the plaintiffs and the defendants provided that the defendant should not for the space of one year next after his leaving or being dismissed carry on the business of hay and straw merchant or enter into the service of or act as agent for any person or persons carrying on the business of hay and straw merchants in the United Kingdom, or in France, or in the Kingdom of Belgium or Holland, or in the dominion of Canada. The defendant within twelve months after he left the service of the plaintiffs entered the service of a hay and straw merchant in London. The plaintiffs applied for and obtained an injunction restraining the defendant from in any way acting for the rival merchant. The defendant appealed.

It was held by *Lindley*, M. R., and *Rigby*, L. J., (*Vaughan Williams*, L. J., diss.) that it was necessary for the protection of the plaintiffs that the rival merchants should not know to whom they sold their hay and where they got it from, that therefore the covenant restraining their clerk and foreman who was in their trade secrets from serving under rival merchants for the space of one year was certainly reasonable, that a covenant in restraint of trade which is reasonably necessary for the protection of the covenantee should not be held void on the ground of public policy unless some specific ground could be established, that no specific ground having been established in this case the covenant was not void on the ground of public policy, and that even if the restraint be held to have an unreasonable extension in space, yet the agreement as to the foreign countries being severable from that as to the United Kingdom, the restraint was valid at least so far as it related to the United Kingdom (See *Baines* v. *Geary* (1887) 35 Ch. D. 154 and *Nordenfelt's Case* (1893) 1 Ch. 630. They therefore granted the injunction.

On the other hand *Vaughan Williams*, L. J., dissenting held that the doctrine that all covenants in restraint of trade are *primâ facie*

unreasonable had not been rescinded by recent decisions, that the reasonableness of a restraint could not be determined without considering whether the restraint is injurious to the public, that having regard to the interest of the public in freedom of trade and in the liberty of the covenantor to earn a livelihood in any lawful industry, the restraint imposed upon the defendant, though only for a twelvemonth, was unreasonable and invalid and could not be enforced.

Will—Construction—Gift to son, his wife and children—Re-marriage of son after date of will—Claim of the second wife.

In re **Drew—Drew** *v.* **Drew** [1899] 1 Ch. 336.

A testator devised property to his son, his son's wife and children in succession. The wife who was living at the date of the will subsequently died and the son married again. The question was whether this wife who survived him was entitled to take a life-estate under the will. It was contended for her that the will devised property to the sons of his son who should be living at the date of his son's death without any restriction that the grandsons were to be by the son's wife living at the date of the will, that therefore a second wife was equally within the contemplation of the will, and that the following proviso in the will showed that the benefit of the will was not confined to any particular wife of the son. The proviso ran as follows: "And after determination of the estate so given . . . to my said son . . . . upon trust that the said trustees . . . . . do and shall retain and keep . . . . the surplus rents and profits . . . . . and the interest, dividends and income of the one-thirteenth share hereinbefore directed to be invested for my said son . . . . *and his family* and every part thereof for the purpose of applying the same in or towards the maintenance . . . . of . . *Drew, his wife and children* at such time or times . . . . . ." Stress was laid on the italicised part of this proviso to show that the life-estate was not confined to the wife who was living at the date of the will. Mr. *Stirling*, J., held that there was enough in the will to rebut the presumption that the gift of the life-estate was confined to the wife living at the date of the will and that the widow was entitled.

Practice—Infant—Jurisdiction to order infant to pay costs.

Woolf *v.* **Woolf** [1899] 1, Ch. 343.

In this case it was held that an infant defendant, who was restrained by injunction of Court from representing falsely that the business

carried on by him was in any way connected with that carried on by the plaintiffs, might lawfully be directed by the court to pay the costs of the action.

Chubb v. *Griffiths* [1865] 35 Beav. 127 and *Lempriere* v. *Lange* [1879] 12 Ch. D. 675 followed.

Will—Power of appointment—Exercise of power—Construction.

In re **Jack—Jack** *v.* **Jack** [1899] 1 Ch. 374.

A testator bequeathed £15,000 in trust to a woman for life, and on her death to her three children in such shares as she should appoint by will or codicil and in default of appointment to them in equal shares. The woman after making appointment as to four-sixths of the fund declared as follows: "I make no appointment of the other two-sixth parts of the said sum of £15,000 as *I wish them to pass directly to my said two daughters* so as to give them an immediate vested and disposable interest therein, and *I also declare that neither my son nor his children shall take any share or interest in the said unappointed parts of the said trust funds.*"

The question was whether there was any appointment of the two-sixths by implication, whether, if not, the parties should not be put to an election, and whether having regard to the last clause the appointment of the son to a one-third share in the first clause was not conditioned upon his not claiming any share in the unappointed parts of the fund. *Romer*, J., held that the testatrix herself having declared that the two-sixths were unappointed, he could not imply any appointment of them, that no question of election could arise in the case, and that, lastly, the condition could not be *implied* as the effect of such implication would be to defeat the claims of the son's children in the event of the son (who had only a life-interest, the residue going to his children after his death) laying claim to the unappointed parts of the trust fund.

Practice—Separate causes of action—Same defendants—Same transaction—Company—False statement in prospectus—Repudiation after action.

Drincqbier *v.* **Wood** [1897] 1 Ch., 393.

Where a number of persons who were deluded into taking debentures by the mis-statements of the directors in a prospectus jointly brought a suit for damages against the directors, it was held that the causes of action were the same and arose out of the same transaction and against the same defendants and that the action was therefore rightly instituted.

Section 3 of the Director's Liability Act, 1890, which provides that director shall not be liable to an action for damages for misrepresentations in a prospectus, if the prospectus was issued without his knowledge, and, if as soon as he came to know of its issue, he gave public notice that it was issued without his knowledge or consent, does not exonerate him from liability, unless he repudiated the prospectus *before the date of the action.* Therefore, when an action has been already brought for damage, it is too late to repudiate; and the statement of defence is not a *reasonable public* notice of repudiation within the meaning of the section.

Gift—Equitable assignment—Banker's deposit receipt—Indorsement and delivery—Donee executor.

In re: **Griffin—Griffin** *v.* **Griffin** [1899] 1 Ch. 408.

Where the owner of a banker's deposit receipt indorses and delivers it to a person with the intention of making a gift of it to him, he has done everything required to be done by him in order to transfer the debt, and there is a valid equitable assignment of the amount held by the bank (*Milroy* v. *Lord*, 1862, 4 D. F. and J. 264.) See also *Fortescue v. Barnett*, 1834, 3 My. and K. 36, 43, and *Donaldson* v. *Donaldson*, 1854, Kay, 711, 719.

And if anything remained to be done in order to complete the gift, the appointment of the donee as executor of the donor perfects the gift.

JOTTINGS AND CUTTINGS.

We beg to acknowledge with thanks the receipt of the following publications:—

The Bombay Law Reporter for May and June (*in exchange*).

The Albany Law Journal for May and June (*in exchange*).

The Calcutta Weekly Notes for May and June (*in exchange*).

The Allahabad Weekly Notes for May and June (*in exchange*)

The Green Bag for May and June (*in exchange*).

The Canadian Law Times for May and June (*in exchange*).

The Canada Law Journal for May and June (*in exchange*).

The Ceylon Law Review, Vol. I, No. 2 (*in exchange*).

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Judges who are entitled to retire:—Mr. Justice *Day*, who last Saturday completed seventeen years of judicial service, is one of the five occupants of the Bench who are entitled to retire on pensions. The Master of the Rolls has occupied a seat on the Bench for twenty-four years, Mr. Justice *Mathew* for eighteen years, Mr. Justice *North* for seventeen years, and Lord Justice *Smith* for sixteen years. Mr. Justice *Wills* will shortly be added to the number who have earned the right to retire on pensions. He was appointed a Judge on July 19, 1884, and therefore completes fifteen years of Judicial service on the 19th of next month.—*The London Law Journal*.

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Too many counsel in a case:—In a patent case, remarkable even among patent cases for the array of Queen's Counsel and juniors engaged, Mr. Justice *Wills* made the observation—not made for the first time, but none the less true—"In a multitude of counsel there is wisdom"; but as every truth, according to the philosophy of Hegel, is but half a truth, the stepping stone to a higher, so the same aphorism about a multitude of counsel must be received with a reservation for the frailties of human nature. A multitude of counsel means—when it comes to the conduct of a case—a divided responsibility. Each distinguished counsel, with perhaps a dozen cases of his own in his hands, is tempted—sorely tempted—to leave the many-counselled case to the industry of those who are 'with him'—at all events, not to put his whole heart and mind into it; and nothing can be more fatal to the success of a case than this weakening of responsibility. A counsel, on the other hand, who knows that the whole responsibility of a case rests upon him, that he can delegate none of it and depend on no one else, makes it his business thoroughly to master the case in all its details, facts and law alike; and from this perfect knowledge he gains the self-reliance and readiness which greatly help to win cases. Of course, solicitors have a very good reason for briefing several leaders, apart from the combined wisdom argument. They want to feel assured that they will have the presence of one leader at least when the case comes on, but it may be very much questioned whether in thus seeking to strengthen their position they are not unintentionally damaging it.—*The London Law Journal*.

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Inns of Court and Law Examinations:—Speaking on Wednesday at the Mansion House dinner to the Judges, the Master of the Rolls said that in his opinion the standard of knowledge required by the Inns of Court in their Examinations was not high enough. Yet the recent Bar Examinations do not encourage the belief that admission to the profession is so easy as to afford no indication of legal knowledge. Of 101 candidates for pass certificates, 37 were unsuccessful; of 55 candidates in the Constitutional Law and Legal History Examination, 22 were

unsuccessful; of 25 candidates in the Roman Law, Constitutional Law, and Legal History Examination, 13 were unsuccessful; and of 60 candidates in the Roman Law Examination, 28 failed.—*The London Law Journal.*

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A Judge's remarks about the jury:—Mr. Justice *Phillimore* displays on the Bench many qualities that command our admiration and respect, but the attitude he sometimes adopts towards Juries exhibits a strange misconception of the functions of a Judge. It is not many weeks ago since he thought fit at the close of a civil case to express his disagreement with the verdict of a Jury. Such a departure from the traditions of the Bench is regrettable enough in a civil case; it is infinitely worse in a criminal case in regard to a verdict of acquittal. A man was tried at Bodmin a few days ago on a charge of subornation of perjury. The Jury found him 'not guilty', whereupon Mr. Justice *Phillimore* deemed it necessary to make the superfluous remark that the prisoner was entitled to their verdict, and to observe that the Jury, by the reason they gave for acquitting him, showed that they had failed to understand the case notwithstanding all that has been said to them. If the learned Judge's observations be correctly reported, we have no hesitation in describing them as an unjustifiable attack upon our system of trial by Jury. It may be that the view taken by the Jury was wrong; but we entirely fail to understand on what ground a Judge is entitled to set up his own judgment as infallible, and to attach to a prisoner a stigma which the twelve men who have been intrusted with the duty of trying him have decided he does not deserve to bear.—*The London Law Journal.*

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The new list of Q. Cs.:—A peculiarity of the latest list of new Queen's Counsel is that not one ordinary member of the Common-law Bar is included in it. Four of the eight new Queen's Counsel are members of the Parliamentary Bar, two belong to the Chancery Bar, one is a practitioner in the Admiralty Court, and another is a specialist in Revenue cases. Five belong to the Inner Temple, two to the Middle Temple, and one to Lincoln's Inn. The comparatively small number of junior members of the Bar on the governing bodies of the Inns is reduced by the latest distribution of 'silk;' Mr. Badcock has been a Bencher of the Middle Temple since 1895 and Mr. Ram has been a Bencher of the Inner Temple since 1897. The latest additions bring the total number of Queen's Counsel up to 250. Considerably more than half the number owe their appointment to the present Lord Chancellor. —*The London Law Journal.*

NOTES OF AMERICAN CASES.

The negotiability of a note which contains a clause reserving the title to property for which the note is given until payment thereof, with a right to retake it in case of non-payment, is sustained in *Choate* v. *Stevens* (Mich.) 43 L. R. A. 277. The other authorities on the subject are collated in a note to the case.

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The right of a building, loan, and investment society to execute negotiable paper is held, in *Grommes* v. *Sullivan* (C. C. App. 7th C.), 43 L. R. A. 419, to be implied in the power to incur debts for various purposes and to sell and mortage property. The annotation to this case reviews the other decisions on the subject.

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Mere standing place on the side of a car is held, in *Graham* v. *McNeill* (Wash.) 43 L. R. A. 300, to be insufficient accommodation to charge a passenger with negligence in standing on the car platform.

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A passenger carried beyond destination, and placed by the conductor in a hotel to await a return train on the following day, is held, in *Central of Georgia R. Co.* v. *Price* (Ga.), 43 L. R. A. 402, to have no right of action against the railroad company for damages sustained at the hotel in consequence of its proprietor's negligence, unless the conductor had express authority to constitute him the carrier's agent in caring for the passenger.

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A promise to pay a debt when the debtor "might feel able to pay" is held, in *Pistel* v. *American Muntual L. Ins. Co.* (Md.), 43 L. R. A. 219, to create a legal and moral obligation to pay when the debtor is able, and to require him honestly to exercise his judgment as to that fact.

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The mere expression of dissatisfaction with an article furnished under a contract providing that it shall be satisfactory is held, in *Worthington* v. *Cwin.* (Ala.), 43 L. R. A. 382, insufficient to justify a termination of the contract, when there was no actual dissatisfaction; and a slight defect in a small quantity of material delivered under a

contract for successive shipments is held insufficient to justify an abandonment of the entire contract.

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The serial publication of "The Autocrat of the Breakfast Table" in "The Atlantic Monthly" before taking steps to secure a copyright is held, in *Holmes* v. *Hurst*, U. S. Advance Sheets, 606, to be such a publication under the copyright law as to vitiate the subsequent copyright of the whole book.

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Neither the probate court nor the personal representative of a deceased person is held, in *O'Donnell* v. *Slack* (Cal.), 43 L. R. A. 388, to have any right to the body, in the absence of any testamentary provision on the subject, or to control the manner of its disposal or the place of its interment.

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The jurisdiction of a court to enjoin a foreign insurance company against collecting excessive assessments from a resident of the local jurisdiction, or forfeiting his policy for non-payment, is denied in *Clask* v. *Mutual Reserve Fund Life Asso.* (D. C.), 43 L. R. A. 390, on the ground that the relief sought would interfere with the internal affairs of the corporation.

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The loss of a reward offered for the capture of a criminal is held in *McPeek* v. *Western Union Teleg Co.* (Ia.), 43 L. R. A. 214, to be recoverable as a part of the damages for failure to deliver a telegram giving advice as to the whereabouts of the fugitive, although it did not show on its face the purpose for which it was sent, where the company knew that a message relating to the capture was expected.

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A change of a country road to a city street in consequence of the incorporation of a city is held, in *Huddleston* v. *Eugene* (Or.), 43 L. R. A. 444, not to impose an additional servitude upon the land over which the road runs, so as to require any new condemnation.

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The failure to construct fire escapes on a hotel as required by an ordinance is held, in *Weeks* v. *McNulty* (Tenn.), 43 L. R. A. 185, insufficient to make the proprietor liable for the death of a guest by fire, where it does not appear that the fire escape would have afforded him any benefit, but there is evidence that he had locked himself in his room and tried to break the door to make his escape, and also that he might have escaped safely by leaping from the window to the roof of an adjoining building.

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A woman to whom an infectious disease was communicated by a man with whom she had contracted a void marriage while she had a former husband was held, in *Deeds* v. *Strode* (Id.), 43 L. R. A. 207, to have no right of action against the man with whom she was living, on account of the injury, where he had not been guilty of any fraud or deceit in bringing about their relations.

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A peculiar case respecting the liability of a person for negligence while insane or mentally incompetent is that of *Willians* v. *Hays* (N. Y.), 43 L. R. A. 253, holding that the charterer of a vessel, who is in command, is not liable for her loss because of a lack of care or skill in her navigation after he has become irresponsible on account of physical and mental exhaustion resulting from his being continuously on duty in efforts to save the vessel during a storm.

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An order of court for the mortgage of an infant's property, rendered in the exercise of a limited but statutory jurisdiction, and procured by fraud, to secure a debt contracted by the guardian in carrying on business without authority in the infant's name, is held, in *Warren* v. *Union Bank* (N. Y.), 43 L. R. A. 256, to be invalid and subject to attack by a suit in equity.

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An injunction against the construction and operation of an electric railway on a public street without legislative authority is denied in *Birmingham Traction Co.* v. *Birmingham R. & E. Co.* (Ala.), 43 L. R. A. 233, on the ground that the construction of the road would be a mere private trespass for which compensation could be had at law.

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The mere fact that the sale and drinking of intoxicating liquors is only an incident, and not the main object, of a social club, and that only members are permitted in the rooms, is held, in *Mohrman* v. *State* (Ga.), 43 L. R. A. 398, insufficient to make the place any less a tippling house within the restrictions of a statute.

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Judgment and execution against one of the makers of a joint note for his proportionate share, are held, in *Sully* v. *Cambell* (Tenn.), 43 L. R. A. 161, to leave the other makers liable for the amount still unpaid, where the statute makes the note joint and several. With the case is an extensive note on the effect of judgment in an action against part of the obligors on a joint or joint and several contract, to release or limit the liability of the other obligors.

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